

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2019

C O R A M

THE HON'BLE Mr.JUSTICE S.MANIKUMAR
AND
THE HON'BLE Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.32424 of 2018
and WMP.No.37622 of 2018

K.Krishnamurthy ... Petitioner

Vs

1. The District Collector
Salem District
Salem.
2. The Commissioner
Salem Corporation
Salem District.
3. The Assistant Commissioner
Ammapettai Zonal Office
Municipal Corporation
Salem District.
4. The Assistant Executive Engineer
Ammapettai Zonal Office
Municipal Corporation
Salem District.
5. The District Environmental Engineer
Pollution Control Board
Siva Tower, Post Box No.457, No.1/276
Meyyanur Main Road
Meyyanur, Salem - 636 004.
6. MSV Construction & Co.
Represented by its Managing Director
41/2, GEO Colony, TMS Mill Back Side
Jagir Ammapalayam
Salem - 636 302.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from using the land in Survey No.113P, Thathampatti Village, Salem District, an total extent

land of 4 grounds earmarked as burial ground for any other purpose other than burring dead bodies in view of petitioner's representation dated 22.10.2018.

For Petitioner : Mr.A.M.Esakkiappan

For Respondents : Mr.E.Manoharan
Additional Government Pleader [R1]

Mrs.K.Bhuvaneswari [R2 to R4]

Mr.C.Kasirajan
Standing Counsel for TNPCB [R5]

Mr.J.Ramakrishnan [R6]

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

The present Public Interest Litigation has been filed for writ of mandamus forbearing the respondents from using the land in Survey No.113P, Thathampatti Village, Salem District, having a total extent of four grounds earmarked as burial ground, for any other purpose other than using it as a burial ground.

2. The petitioner states that four grounds of land in Survey No.113P, Thathampatti Village, Salem District, is being used a burial ground for more than 100 years. However, the sixth respondent on 07.9.2018 has put up a construction in the said land at the instance of the respondents 2 to 4, and the Government have decided to use the said land for Microlevel Compost Centre for disposing bio-degradable and non bio-gradable wastes. According to the petitioner, the land that has been used as a burial ground cannot be used for any other purposes and the respondents must be prevented from using this land for any purpose, other than a burial ground.

3. This Court vide order dated 07.12.2018, issued notice to the respondents and granted an ad-interim injunction restraining the respondents from proceeding with the construction of Solid waste Management Facility in the said area.

4. The respondents 2 to 4 and the sixth respondent have filed their counter affidavits.

5. Heard Mr.A.M.Esakkiappan, learned counsel for the petitioner and Mr.E.Manoharan, learned Additional Government Pleader for the first respondent, Mrs.K.Bhuvaneswari, learned counsel for respondents 2 to 4, Mr.C.Kasirajan, learned Standing Counsel for the fifth respondent and Mr.J.Ramakrishnan, learned counsel for the sixth respondent.

6. The petitioner has reiterated the contentions made by him in the writ petition. Material on record would show that out of the total extent of burial ground of 17,920 sq.mtrs (or) 4.43 acres, the Micro Level Compost Centre is being constructed in 6500 sq.ft., which is a small portion of the total extent of burial ground.

7. The learned counsel for the respondents 2 to 4 would state that most of the land in question would continue as a burial ground in the proposed Master Plan and there was a proposal to set up a Micro Level Compost Centre in a small area of the said burial ground to process the solid waste collected locally. It is stated that the waste collected is converted as manure for agricultural purpose and that apart, the said land is allowed to be used for health sanitation purpose under the proposed Master Plan for Salem Local Planning Area. It is stated that the proposal has been approved by the Government vide G.O.Ms.No.15 H&UD Department dated 22.03.2005. The Municipal Corporation has accorded sanction to alter the use of the land, as and when required.

8. Material on record shows that about 30 such centres have been proposed in Salem City for the said purpose and 15 centres are under construction and 5 centres are already functioning. It is also the submission of the respondent that there is a common dump yard located at 8.5 kms. away from the city and daily waste solid materials of 400 M.T., are dumped in the said dump yard and that due to heavy dumping of solid waste on daily basis, the ground water in the locality is being polluted. It is further stated that World Health Organisation has suggested to process the solid waste at the places where it is produced and also has laid proposals to set up Micro Level Compost Centres and hence, under this scheme the Micro Level Compost Centres are being put up. It is further stated that the respondents proposed to set up a Micro Level Compost Centre in the land in question, which covers only a small portion of the graveyard and that most of the area in the said burial ground is being utilized as a burial ground. It is also stated that the area is far away from habitation, the Micro Level Compost Centre in Survey No.113P, Thathampatti Village, Salem District, will not cause any nuisance or disturbance to the residents of the Thathampatty locality.

9. Having a proper Waste Management Programme, is the biggest challenge that is being faced by Corporations and Municipalities. Courts can take judicial notice of the fact that due to unabated urbanisation, there is actually no space left for dumping waste materials. The local authorities have to balance the competing interest and have to find out areas which are unutilised, which can be used for Micro Level Compost Centre.

10. Considering the facts that have been placed before us, the respondents cannot be found fault with for selecting a small area in a burial ground for constructing the Micro Level Compost Centre. It cannot be said that no public interest is involved in the said proposal. Areas which are away from habitation can be used to construct a Micro Level Compost Centre, as this will not cause any inconvenience and hardship to the residents. The Government is coming out with policies for selection/conversion of waste materials to manure and the public should actually welcome such measures and must co-operate with the authorities in maintaining a highly pure hazardous free environment. It is also relevant to mention here, this Court has also dealt with similar issues in PIL matters and has passed orders in W.P.No.12930 of 2018, WP.No.26704 of 2017 and WP.No.32938 of 2017.

11. In the result, the instant writ petition is dismissed in view of the above settled principles. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To :

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Siva Tower, Post Box No.457, No.1/276
Meyyanur Main Road
Meyyanur, Salem - 636 004.

+1cc to Mr.R.Sivakumar, Advocate Sr.19493
+1cc to Mrs.K.Bhuvaneswari, Advocate Sr.18776
+1cc to Mr.A.M.Esakkiappan, Advocate Sr.18715
+1cc to Mr.C.Kasirajan, Advocate Sr.18588

W.P.No.32424 of 2018

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srg 12/04/2019

सत्यमेव जयते

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